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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,553	09/19/2000	Michel Gillet	BEIERDORF 65	1497
7590 04/26/2004				
NORRIS MCLAUGHLIN & MARCUS 220 EAST 42ND STREET, 30TH FLOOR NEW YORK, NY 10017				
EXAMINER SIMONE, CATHERINE A				
ART UNIT		PAPER NUMBER		
1772				

DATE MAILED: 04/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/646,553	<b>Applicant(s)</b> GILLET ET AL.	
	<b>Examiner</b> Catherine Simone	<b>Art Unit</b> 1772	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,6 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6 and 15-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-3, 6, 15, 16 and 21-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Murayama et al. (5,633,070) in view of Feret (5,012,801).

Regarding **claims 1, 15, 16, 23**, Murayama et al. discloses an elastic laminate backing material consisting essentially of elastic layers, the laminate composed of at least a first layer of an elastic polymer film (see col. 2, lines 18-20 and lines 56-60) and a second layer of an elastic textile sheet (see col. 2, lines 21-22), wherein a self-adhesive coating (see col. 2, lines 8-13 and lines 16-22) has been applied to the textile sheet on the side opposite to that in contact with the polymer film (see col. 5, lines 19-27) and wherein the first layer is composed of two coextruded layers with an outer layer and a tie layer, where the tie layer is composed of pure thermoplastic polyolefins (see col. 2, lines 56-60 and lines 64-65). However, Murayama et al. fails to disclose the elastic laminate having either a microembossed effect, a macroembossed effect or both. Feret

teaches that it is old and well-known in the analogous art to have an elastic polymer film having a microembossed effect, a macroembossed effect or both (see col. 6, lines 20-36) for the purpose of producing an elastic laminate backing material having a self-adhesive coating.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the elastic polymer film in Murayama et al. with a microembossed effect, a macroembossed effect or both as suggested by Feret in order to produce an elastic laminate backing material having a self-adhesive coating.

Regarding **claims 21 and 22**, Murayama et al. fails to disclose the laminate showing no more than 10% permanent deformation in either the transverse or longitudinal direction after elongation of 50% and 100% of its original length. However, Murayama et al. teaches an elongation at break (see col. 5, table 1) and the laminate consisting of all elastic layers (see col. 2, lines 30-33 and lines 56-60). Therefore, the permanent deformation of the laminate would be readily determined through routine experimentation by one having ordinary skill in the art depending on the desired end results. Thus, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have the laminate in Murayama et al. showing no more than 10% permanent deformation in either the transverse or longitudinal direction after elongation of 50% and 100% of its original length, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art absence of showing unexpected results. MPEP 2144.05(II).

Regarding **claim 2**, note in Murayama et al. the weight per unit area of the textile sheet is 25 to 200 g/m<sup>2</sup> (see col. 2, lines 37-38). Regarding **claim 3**, note in Murayama et al. the polymer

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film of the first layer has a structure comprising more than one layer of a copolymer of ethylene and polar comonomers (see col. 2, lines 56-60 and lines 64-65). Regarding **claim 6**, note in Murayama et al. the polymer film of the first layer comprises at least 65 wt% of a thermoplastic elastomer (see col. 5, lines 19-21).

4. **Claim 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Murayama et al. (5,633,070) in view of Feret (5,012,801) and in view of Haffner et al. (6,096,014).

Murayama et al. in view of Feret teaches the claimed invention as shown previously except for the polymer film of the first layer being a copolymer of ethylene and a-olefin having a carbon number  $C_4-C_{12}$ , where the copolymer has a melt index of from 1 to 20 g/(10min) and a density of from 860 to 900 kg/m<sup>3</sup>. Haffner et al. teaches that it is old and well-known in the art to have a copolymer of ethylene and a-olefin having a carbon number  $C_4-C_{12}$ , where the copolymer has a melt index of from 1 to 20 g/(10min) and a density of from 860 to 900 kg/m<sup>3</sup> (see col. 4, line 43 and Table A) for the purpose of producing a polymer film to form an elastic laminate.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the polymer film of the first layer in Murayama et al. with a copolymer of ethylene and a-olefin having a carbon number  $C_4-C_{12}$ , where the copolymer has a melt index of from 1 to 20 g/(10min) and a density of from 860 to 900 kg/m<sup>3</sup> as suggested by Haffner et al. in order to produce a polymer film to form an elastic laminate.

5. **Claims 17-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Murayama et al. (5,633,070) in view of Feret (5,012,801) and in view of Masatoshi (GB 2 252 528).

Murayama et al. discloses an elastic laminate backing material consisting essentially of elastic layers, the laminate composed of at least a first layer of an elastic polymer film (see col.

2, lines 18-20 and lines 56-60) and a second layer of an elastic textile sheet (see col. 2, lines 21-22), wherein a skin-accessible self-adhesive coating (see col. 2, lines 8-13 and lines 16-22) has been applied to the textile sheet and wherein the first layer is composed of two coextruded layers with an outer layer and a tie layer, where the tie layer is composed of pure thermoplastic polyolefins (see col. 2, lines 56-60 and lines 64-65). However, Murayama et al. fails to disclose the elastic laminate having either a microembossed effect, a macroembossed effect or both. Feret teaches that it is old and well-known in the analogous art to have an elastic polymer film having a microembossed effect, a macroembossed effect or both (see col. 6, lines 20-36) for the purpose of producing an elastic laminate backing material having a self-adhesive coating.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the elastic polymer film in Murayama et al. with a microembossed effect, a macroembossed effect or both as suggested by Feret in order to produce an elastic laminate backing material having a self-adhesive coating.

Furthermore, both Murayama et al. and Feret fail to disclose the textile layer having either a microembossed effect, a macroembossed effect or both. Masatoshi teaches that it is old and well-known in the analogous art to have a textile sheet having either a microembossed effect, a macroembossed effect or both (see page 8, lines 11-14) for the purpose of producing an elastic laminate backing material having a self-adhesive coating.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the textile sheet in Murayama et al. with either a microembossed effect, a macroembossed effect or both as suggested by Masatoshi in order to produce an elastic laminate backing material having a self-adhesive coating.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Catherine Simone  
Examiner  
Art Unit 1772  
April 19, 2004



HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

4/22/04